

AMENDED IN ASSEMBLY JUNE 5, 2007

**SENATE BILL**

**No. 770**

---

**Introduced by Senator Cogdill**

February 23, 2007

---

An act to amend Section 61384 of the Food and Agricultural Code, relating to milk.

LEGISLATIVE COUNSEL'S DIGEST

SB 770, as amended, Cogdill. Milk.

Existing law provides that the sale by any retailer, wholesale customer, manufacturer, or distributor, of milk, cream, or any dairy product at less than cost is an unlawful practice. Existing law defines certain terms as used in these provisions, including "total consideration paid or exchanged for raw product," which means, in the case of market milk or market cream, the applicable minimum price of the market milk or market cream, if any, payable by distributors to producers pursuant to stabilization or marketing plans, as specified.

This bill would change the definition of "total consideration paid or exchanged for raw product," in the case of market milk or market cream *used in the manufacture of class 1, 2, and 3 products*, to mean the Department of Food and Agriculture's current announced regulated minimum price of the market milk or market cream, payable by handlers to producers, except as specified. Because this bill would change the definition of a crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 61384 of the Food and Agricultural Code  
2 is amended to read:

3 61384. (a) The sale by any retailer, wholesale customer,  
4 manufacturer, or distributor, including any producer-distributor  
5 or nonprofit cooperative association acting as a distributor, of milk,  
6 cream, or any dairy product at less than cost is an unlawful practice.  
7 This subdivision applies to finished products, and does not apply  
8 to sales of bulk milk between handlers.

9 (b) For the purposes of this section, the following terms have  
10 the following meanings:

11 (1) "Cost," as applied to manufacturers and distributors, means  
12 the total consideration paid or exchanged for raw product, plus the  
13 total expense incurred for manufacturing, processing, handling,  
14 sale, and delivery.

15 (2) "Cost," as applied to wholesale customers, means the invoice  
16 price charged to the wholesale customer, or the expense of  
17 replacement, whichever is lower, plus the wholesale customer's  
18 cost of doing business.

19 (3) "Cost of doing business," as applied to wholesale customers,  
20 means a wholesale customer's total operating expense divided by  
21 the customer's total sales income.

22 (4) (A) Except as provided in subparagraph (B), "total  
23 consideration paid or exchanged for raw product," in the case of  
24 market milk or market cream *used in the manufacture of class 1,*  
25 *2, and 3 products*, means the department's current announced  
26 regulated minimum price of the market milk or market cream,  
27 payable by handlers to producers, except as provided in Section  
28 62708.5.

29 (B) Notwithstanding subparagraph (A), in situations involving  
30 sales on a bid basis to public agencies or institutions, the definition  
31 in subparagraph (A) shall only apply to market milk or market  
32 cream that is utilized for class 1 purposes, as those purposes are  
33 defined in Chapter 2 (commencing with Section 61801).

1 (c) Proof of cost, based on audits or surveys conducted in  
2 accordance with generally accepted accounting principles as  
3 defined by the American Institute of Certified Public Accountants  
4 and the Financial Accounting Standards Board, and modified, if  
5 necessary, to satisfy the requirements of this section, shall establish  
6 a rebuttable presumption of that cost at the time of the transaction  
7 of any sale. This presumption is a presumption affecting the burden  
8 of proof, but it does not apply in a criminal action.

9 (d) Nothing in this section shall be deemed to prohibit any of  
10 the following activities:

11 (1) The meeting, in good faith, of a lawful competitive price or  
12 a lawful competitive condition.

13 (2) A distributor's action in making conditional sales of  
14 equipment or other property, extending credit for merchandise  
15 purchased, or paying a customer's obligations not otherwise  
16 prohibited by this chapter to another distributor in connection with  
17 the transfer of the customer's business from the latter to the former.

18 (e) The secretary shall establish, by regulation pursuant to  
19 Section 61341, the procedures which shall be used to make the  
20 determinations required by this section, including the following:

21 (1) Any modifications to the generally accepted accounting  
22 principles described in subdivision (c) necessary to satisfy the  
23 requirements of this section.

24 (2) Procedures for evaluating efforts to meet lawful competitive  
25 prices or conditions.

26 (3) Other procedures necessary or appropriate to facilitate the  
27 application or enforcement of this section.

28 SEC. 2. No reimbursement is required by this act pursuant to  
29 Section 6 of Article XIII B of the California Constitution because  
30 the only costs that may be incurred by a local agency or school  
31 district will be incurred because this act creates a new crime or  
32 infraction, eliminates a crime or infraction, or changes the penalty  
33 for a crime or infraction, within the meaning of Section 17556 of  
34 the Government Code, or changes the definition of a crime within  
35 the meaning of Section 6 of Article XIII B of the California  
36 Constitution.